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*Attorneys for Plaintiff Valerie Brooks
and the Putative Class*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VALERIE BROOKS, individually and on behalf of all others similarly situated,

Plaintiff,

V.

TAPESTRY, INC. d/b/a KATE SPADE, a Maryland corporation; and DOES 1 to 10, inclusive.

Defendants.

CASE NO. 2:21-cv-00156-TLN-JDP

**PLAINTIFF VALERIE BROOKS' NOTICE
OF MOTION AND MOTION FOR
APPOINTMENT OF INTERIM CLASS
COUNSEL**

Hon. Troy L. Nunley

Date: April 29, 2021
Time: 2:00 p.m.
Room: 2, 15th Floor

NOTICE OF MOTION

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on April 29, 2021, at 2:00 p.m., or as soon thereafter as counsel may be heard in the courtroom of the Honorable Troy L. Nunley, located in the Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, CA 95814, Plaintiff Valerie Brooks will and hereby does move for an order appointing Thiago M. Coelho, Esq., of Wilshire Law Firm, PLC, as interim class counsel.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Thiago M. Coelho, Esq., all the pleadings, files and records in this matter, any argument or evidence that may be presented to the Court prior to its ruling, and all other matters of which the Court may take judicial notice.

Dated: March 19, 2021

Respectfully Submitted,

WILSHIRE LAW FIRM

/s/ Thiago M. Coelho
Thiago M. Coelho

Attorneys for Joseph Mier and the Putative Class

MEMORANDUM OF POINTS AND AUTHORITIES

I. THIAGO M. COELHO AND WILSHIRE LAW FIRM ARE ADEQUATE CLASS COUNSEL.

“Rule 23(g)(3) grants the Court authority to appoint pre-certification ‘interim’ class counsel.” *Benkle v. Ford Motor Co.*, No. SACV161569DOCJCGX, 2017 WL 8220707, at *3–4 (C.D. Cal. Apr. 28, 2017) (citing Fed. R. Civ. P. 23(g)(3)). “The 2003 Advisory Committee Notes explain that interim counsel should be appointed ‘if necessary to protect the interests of the putative class,’ and may be appropriate in cases of ‘rivalry or uncertainty.’” *Id.* (quoting Fed. R. Civ. P. 23(g)(3), 2003 Advisory Committee’s Notes). “Any attorney acting on behalf of the class ‘must act in the best interests of the class as a whole.’” *Id.* (quoting Fed. R. Civ. P. 23(g)(3), 2003 Advisory Committee’s Notes). “Interim counsel can only be appointed if that counsel is adequate under the Rule 23(g)(1) factors and will ‘fairly and adequately represent the interests of the class’ under Rule 23(g)(4). *Id.* (quoting Fed. R. Civ. P. 23(g)(2)).

In evaluating adequacy under Rule 23(g)(1)(B), the Court looks to the factors identified in paragraph (1)(A): (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). Beyond the four considerations set forth in Rule 23(g)(1)(A), the Court "may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B).

Id.

A. Counsel Has Done Significant Work Identifying and Investigating the Potential Claims in this Action.

Before counsel for Plaintiff drafted the Complaint, his office reviewed the issues identified by Ms. Brooks to determine whether they were sufficient to state claims under the ADA and Unruh Act. After the Complaint was drafted, counsel for Plaintiff engaged with an expert to

1 identify each and every deviation from national standards that the website presents, for use in the
2 litigation. Since that time, counsel for Plaintiff has diligently engaged in settlement negotiations,
3 and planned carefully his means of attack. Counsel for Plaintiff has made significant inroads in
4 this case.

5 **B. Counsel is Experienced in Handling Specifically This Type of Class Action.**

6 Thiago M. Coelho and Wilshire Law Firm have successfully settled approximately 160
7 ADA class actions on behalf of blind and visually impaired plaintiffs alleging barriers in websites
8 which prevent those websites from working with screen-reading software, just like this one. They
9 have defeated countless motions to dismiss, including those alleging lack of standing, and lack of
10 personal jurisdiction, and have fought and won battles over exercise of supplemental jurisdiction.
11 They have also filed motions for class certification. They know what it takes to see these types
12 of cases through to the end, and are primed to do so here.

13 **C. Counsel is Knowledgeable on Applicable Law.**

14 Due to this experience, Thiago M. Coelho and Wilshire Law Firm are extremely
15 knowledgeable and well-versed in Title III of the ADA and the Unruh Act. These attorneys know
16 the ins and outs of disability discrimination, having fought countless battles over standing,
17 jurisdiction, and on the merits of their claims.

18 **D. Counsel Has Committed and Will Commit Significant Resources Towards
19 Representing the Class.**

20 Thiago M. Coelho and Wilshire Law Firm have heavily invested in attorneys and support
21 staff dedicated to Title III ADA and Unruh Act cases and can put together the team necessary to
22 prevail. Wilshire Law Firm, PLC, has also invested in an expert's investigation of the website,
23 resulting in an expert report which will provide key evidence in this case. Thiago M. Coelho and
24 Wilshire Law Firm will commit to expend whatever extra resources are necessary to succeed in
25 this litigation.

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E. The Existence of a Competing Non-Class Action in the Southern District of Florida Necessitates Early Appointment of Counsel.

Courts have held that interim counsel “may be appropriate in cases of ‘rivarly or uncertainty.’” *Benkle*, 2017 WL 8220707, at *3–4 (quoting Fed. R. Civ. P. 23(g)(3), 2003 Advisory Committee’s Notes). Such a case is presented here. A different plaintiff has filed an individual case in the Southern District of Florida entitled *Petersen v. Tapestry, LLC*, No. 0:20-cv-62081-RS, which seeks only injunctive relief, and the Defendant has filed a motion to stay Ms. Brooks’ case pending resolution of the Florida action. If Defendant prevails, it will put at risk the possibility of classwide recovery whatsoever, as *Petersen* is not a class action, yet will likely impact the Classes’ ability to recover in this case. As the *Petersen* plaintiff is in all likelihood a class member of the Nationwide Class pled by Ms. Brooks, and can recovery monetarily in this case, though she cannot recover damages in her own, she stands to benefit from interim class counsel being appointed here, and this case moving forward.

II. CONCLUSION

Respectfully, the Court should grant Plaintiff's motion and issue an order appointing Thiago M. Coelho as interim class counsel.

Dated: March 19, 2021

Respectfully Submitted,

WILSHIRE LAW FIRM

/s/ Thiago M. Coelho
Thiago M. Coelho

Attorneys for Valerie Brooks and the Putative Class